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REPORT OF THE COMMITTEE ON THE TORRENS SYSTEM AND REGISTRATION OF TITLE TO LAND.

To the Conference of Commissioners on Uniform State Laws:

This committee presented to the last Annual Conference of Commissioners in Montreal a tentative act for a uniform state law for the registration of titles to land, but it was not printed nor discussed by the Conference. A second tentative act is presented to this Conference with the hope that time may be found for its full consideration. This draft has been made after a study of the Australian and Canadian Torrens Acts and of all the land registration acts passed in the United States. Since the last Conference Mississippi has passed such an act, and there are now 11 states with legislation on this subject, namely, California, Colorado, Illinois, Massachusetts Minnesota, Mississippi, North Carolina, New York, Ohio, Oregon and Washington. The matter is being actively agitated in other states, and the popular demand for such legislation is likely to be greatly increased by the passage of the Federal Reserve Act by the 63d Congress, approved December 23, 1913. This act to a large extent removes the prohibition heretofore existing against loans on lands by national banks, and permits any national bank or banking association not situated in a central reserve city to make loans secured by improved and unencumbered farm land, within its Federal Reserve District, no such loan to be made for a longer time than five years nor for an amount exceeding 50 per centum of the actual value of the property offered as security. Any such bank may now make such loans in an aggregate sum equal to 25 per centum of its capital and surplus or to one-third of its time deposits, and such bank may continue hereafter as heretofore to receive time deposits and to pay interest on the same. Few members of the American Bar have taken the time to study the

provisions and operations of land registration acts. These acts in some respects present novel propositions, and it is in keeping with the traditions of the profession to question their constitutionality. It is said that such legislation is all very well in England, Australia and Canada where there are no written constitutions to limit the power of Parliament, but that the case is wholly different in the United States. And so a respectable portion of the Bar begin by assuming that no land registration act could be passed in the United States which would not be liable to be upset on constitutional grounds. And though our courts have in direct contests sustained the present acts of the states mentioned above in every instance in which they have been attacked, there are still many lawyers who are inclined to doubt the constitutionality of such legislation. This doubt in most instances rests merely on vague general ideas with no accurate knowledge of what has been decided by the courts. It is believed that if the Bar were generally informed on this subject all doubts and opposition to land registration would disappear. It has been thought well, therefore, as briefly as possible, to give an account of the attacks that have been made in the several states on the constitutionality of land registration acts.

1. PEOPLE *v.* CHASE, 165 ILL. 527, 36 L. R. A. 105. Nov. 9, 1896.

This case held the Illinois Registration Act of 1895 unconstitutional. The only contention noticed by the court was that the act conferred judicial powers upon the recorder of deeds who was made registrar of titles; and this was held sufficient to render the whole law invalid. But the legislature promptly passed a new act in 1897 which has stood the test of the courts, as we shall show.

2. STATE *v.* GUILBERT, 56 OHIO ST. 575, 38 L. R. A. 519. JUNE 22, 1897.

In this case the Ohio Land Registration Act of 1896 was attacked: (1) Because it did not provide "due process of law." (2) Because it provided for the taking of private property for

private purposes without the owner's consent. (3) Because it conferred judicial powers on the recorder. (4) Because it was a law of a general nature not having uniform operation throughout the state. (5) Because it impaired the obligation of contracts. This Ohio statute was very crudely drawn, and the court was dead against it though it did not discuss the last two points raised. It is generally conceded that this act was unconstitutional, but all the conclusions of the court have not been entirely approved in subsequent decisions in other states. It was very effective, however, in Ohio and resulted in the repeal of the act by the legislature in 1898, and checked further legislation in that state until its Constitution was amended in 1913.

This double appearance of misfortune was well calculated to discourage the hopes and aims of those who desired a reform of the land laws. But the result has been far different from what might have been at first supposed. Another act was promptly passed in Illinois in 1897, as we have stated; in the same year an act was passed in California; and in the following year the Massachusetts act was passed, to which eight other acts have now been added. And in this connection it should be stated that § 100 of the Constitution of Virginia has given the General Assembly "power to establish such court or courts of land registration as it may deem proper for the administration of any law it may adopt for the purpose of the settlement, registration, transfer, or assurance of titles to land in the state or any part thereof;" and it is expected that the next legislature will exercise this power by the passage of an act.

3. PEOPLE *v.* SIMON, 176 ILL. 165, 44 L. R. A. 801. OCT. 24, 1898.

In this case the Illinois Registration Act of 1897 was attacked: (1) Because it conferred judicial powers on registrars and examiners of titles. (2) Because it permitted the taking of private property "without due process of law." (3) Because it was to take effect only in such counties as might vote in favor of it. (4) Because it was not a general but special law. But the act was sustained against all objections. The powers exercised

by the registrar under the act were declared analogous to those exercised by the Commissioner of Patents; and also in a measure, like the duties performed by officers of the land office. The court said:

> "Duties of a similar nature, involving judgment or discretion, and the application of the law to the facts, are devolved both under the state and federal laws upon many other executive officers, legally. In some instances, it is even held that in the exercise of such judgment the officer is free from judicial interference. But in the case of the registrar this act provides that any person feeling himself aggrieved by the act or neglect of this officer, in any matter pertaining to the duties required of him, may file a petition in equity in the proper court, making the registrar and other persons interested parties defendant, and that the court may proceed therein as in other cases in equity, and may make such order or decree as shall be according to equity in the premises and the purport of the act. This, with the well-known jurisdiction of the courts in mandamus, injunction, rescission, cancellation, bills of relief, and the like, will effectually protect the citizen against any arbitrary conduct on the part of the officer."

And with regard to the duties of the registrar after original registration the court said:

> "Particular stress, however, is laid by counsel for appellant upon the contention that the duties of the registrar as to the subsequent registration of land held in trust upon conditions or limitations are the exercise of judicial power, in violation of the terms of the Constitution. The act requires, where the land is subject to a trust, condition, or limitation, that the original certificate issued shall contain the words 'in trust,' 'upon conditions,' or 'with limitations,' as the case may be. When such land is to be transferred, it is provided that the registrar shall not issue a new certificate, nor shall any transfer of, or charge upon, or dealing with the land, be made, unless pursuant to the order of some court, or upon the written opinion of the two examiners that such transfer, charge, or dealing is in accordance with the true intent and meaning of the trust, condition, or limitation, whereupon he shall proceed to register the title; and such registration is to be conclusive in favor of the grantee, and those claiming under him in good faith and for a valuable

consideration, that such transfer, charge, or other dealing is in accordance with the true intent and meaning of the trust, condition, or limitation. (Sections 68, 69.) If the registration be made pursuant to the order or finding of a court of competent jurisdiction, the acts of the registrar are purely ministerial; but, if made upon the opinion of the two examiners, he is required to exercise a judgment of his own. These duties do not differ materially from those already examined, except that here the decision is made conclusive, in favor of the person taking the transfer in good faith and for a valuable consideration, that the transfer or charge is in accordance with the true intent and meaning of the trust, condition, or limitation. This does no more than abrogate the rule in equity which requires the purchase of trust property to see to the application of the purchase money, and the inclination of courts now is to withdraw from that rule."

With regard to "due process of law," the court said:

"The act does contemplate, in some contingencies, at least, actual personal service, and the general law provides for publication as to unknown owners and persons in interest, and non-residents. An applicant may proceed in this way, and in strict accordance with the act obtain a decree or finding as to his title which will be binding beyond all question, so that, even if the proper construction of the provision were that it attempted to authorize judgment against a resident notified only by publication, yet the law can be given practical effect, in which event only the particular provision would fail, and not the whole law."

And replying to the contention that by proceedings, subsequent to the initial registration, an owner might be deprived of his property without "due process of law," the court said:

"The true theory of this act, as we understand it, is that all holders of vested rights shall be subjected to an adjudication in a court of competent jurisdiction, upon due notice, in order that the true state of the title may be ascertained and declared, and that thereafter the tenure of the owner, the right of transfer and encumbrance, and all rights subsequently accruing shall be determined in accordance with the rules now prescribed. 'A state may, by statute, prescribe the remedies to be pursued in her courts, and may regulate the disposition of the property of her citizens, by

descent, devise, or alienation.' (3 Washb. Real Prop., 4th ed., page 187.) 'The right of ownership which an individual may acquire must therefore, in theory at least, be held to be derived from the state, and the state has the right and power to stipulate the conditions and terms upon which the land may be held by individuals.' (Tiedeman, Real Prop., 2d ed., § 19.) 'The power of the state to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted.' (Arndt *v.* Griggs, 134 U. S. 316, 33 L. Ed. 918, on page 321; 134 U. S. and page 919, 33 L. Ed.) 'The power of the legislature in this respect (as to changing the rules of evidence as to the burden of proof), whether affecting proof of existing rights, or as applicable to rights subsequently acquired, or to future litigation, so long as the rules of evidence sought to be established are impartial and uniform in their application, is practically unrestricted.' (Gage *v.* Caraher, 125 Ill. 447, on page 455.) It being true that the law may prescribe rules of property and rules of evidence by which the title is to be shown, we see no reason why the transfer of real estate may not be made in the way contemplated, and why it may not be made compulsory to make it in that way, if the legislature so determines."

The provision of the statute, shutting off the claims of all persons, whether personally or constructively served with notice, after two years from the entry of the decree was held good "as a limitation law." There was no discussion of the indemnity or the assurance fund feature of the law, because the court said the act could stand and accomplish its purpose without it.

In the course of his opinion, Wilkin, J., said:

"The recent case of State, Atty.-Gen., *v.* Guilbert, 56 Ohio St. 575, 38 L. R. A. 519, is relied upon by counsel for appellant in support of the position taken by them on both of the above points. We have given that case careful consideration. With its conclusion, viz., that the Ohio statute was unconstitutional, we agree, but what is said in argument cannot be adopted as applicable to this case. The main ground upon which that decision rests is that the statute, in providing for the initial registration, attempts to give jurisdiction to the court without service of summons, and this, it is held, falls short of that due process of law guaranteed

by the Constitution. The only notice which that act required was to be given by the applicant himself, and in the application it was unnecessary to name any person claiming an adverse interest as party defendant. On the other feature of the case, viz., as to what constitutes the exercise of judicial power, the opinion is not clear. In the reasoning on that point, Judge Cooley's definition of 'judicial power' is adopted, which we have seen does not serve to distinguish between such quasi judicial powers as may be properly exercised by executive or ministerial officers and those powers which belong solely to the judicial department."

4. TYLER *v.* JUDGES, 175 MASS. 71. JAN. 3, 1900.

The opinion in this case was delivered by Mr. Justice Holmes then Chief Justice of the Massachusetts Supreme Judicial Court. The Massachusetts Act was attacked: (1) Because it deprived all persons except the registered owner of any interest in the land without due process of law. (2) Because it conferred judicial powers on the recorder and assistant recorder. (3) Because there was no provision for notice before registration of transfers or dealings subsequent to the original registration. In discussing the question of due process of law after recounting the notice required by the act, the court said:

"If it does not satisfy the Constitution, a judicial proceeding to clear titles against all the world hardly is possible, for the very meaning of such a proceeding is to get rid of unknown as well as known claims—indeed, certainty against the unknown may be said to be its chief end; and unknown claims cannot be dealt with by personal service upon the claimant. It seems to have been the impression of the Supreme Court of Ohio, in the case most relied upon by the petitioner, that such a judicial proceeding is impossible in this country. (State *v.* Guilbert, 56 Ohio St. 575, 629.) But we cannot bring ourselves to doubt that the Constitution of the United States and of Massachusetts, at least, permit it as fully as did the common law. Prescription or a statute of limitations may give a title good against the world, and destroy all manner of outstanding claims without any notice or judicial proceeding at all. Time and the chance which it gives the owner to find out that he is in danger of losing rights are due process of law in that case. (Wheeler *v.* Jackson, 137 U. S. 245, 258.)"

The difference between an action *in personam* and a proceeding *in rem* was indicated as follows:

> "If, on the other hand, the object is to bar indifferently all who might be minded to make an objection of any sort against the rights sought to be established, and if any one in the world has a right to be heard on the strength of alleging facts which, if true, show an inconsistent interest, the proceeding is *in rem*. (2 Freeman, Judgments, 4th ed., § 606, *ad fin.*)"

And in pointing out the notice required in proceedings *in rem* this language was used:

> "Looked at either from the point of view of history or of the necessary requirements of justice, a proceeding *in rem* dealing with a tangible *res* may be instituted and carried to judgment without personal service upon claimants within the state or notice by name to those outside of it, and not encounter any provision of either constitution. Jurisdiction is secured by the power of the court over the *res*."

And as this utterance has been quoted with approval in Leigh *v.* Green, 193 U. S. 79, 92, it may be taken as authorative. It was held by the court that effectual notice and an opportunity to be heard should be given to all claimants who are known or who, by a reasonable effort can be ascertained; and for this purpose the notice provided by the act was considered sufficient. It was suggested, however, by the court that the act "ought to be amended in the direction of still further precautions to secure actual notice before a decree is entered;" and it was subsequently amended by a provision expressly authorizing the court to, "so far as it considers it possible, require proof of actual notice to all adjoining owners and to all persons who appear to have any interest in or claim to the land included in the application." (Section 31.) At the time the decision we are considering was rendered, the act contained only these provisions for notice: (1) Notice by publication in a newspaper, after the report of the examiner of titles, the names of all persons known to have an adverse interest, and the adjoining owners and occupants so far as known being mentioned. (2) A copy of said notice to be sent by the Recorder by mailing a registered letter to every person named therein whose address was known. (3) Posting of said

notice in a conspicuous place on each parcel of land included in the application, by a sheriff or deputy sheriff, 14 days at least before the return day thereof; the sheriff's return to be conclusive proof of such service. (4) A general provision that the court "may also cause other or further notice of the application to be given." It will be observed that there was no personal service of process by the sheriff or any other officer upon any party to the proceedings. Yet the court sustained the act.

In discussing the duties of the recorder and assistant recorder, the court said:

> "The ordinary business of registration is very nearly ministerial. There is no question to be raised, or which can be raised. If there is a question, either raised by any party in interest or occurring to the assistant recorder, it is to be referred to the judge for decision (Section 53). But whatever may be thought of the original act, by amendment even the ordinary business is to be done only 'in accordance with the rules and instructions of the court.' (St. 1899, c. 131, § 8.) *Under this amendment registration is the act of the court.* The fact that it may be done by the assistant recorder under general orders when there is no question is not different from the power of the clerk to enter judgment in cases ripe for judgment under a general order or rule of the superior court.

And in disposing of the three objections it was said:

> "The act shows throughout the intent that no one shall be concluded without having a chance to be heard; and although some of its methods are new to this Commonwealth, we cannot say that the precautions as to notice are insufficient in substance or form."

An appeal was taken in this case to the Supreme Court of the United States, but a majority of that court held that the appeal had been improvidently awarded. It appeared that the appellant had actual knowledge of the registration proceedings in the state courts, and it was held that he was therefore not affected by the provisions of the act of which he complained. In the assignment of error his only complaint of the unconstitutionality of the statute was that it deprived persons of property without due process of law, an objection which no one with actual knowledge of the proceedings could make. Hence the writ of error was dismissed

because the plaintiff in error did not have the requisite interest to bring in question the constitutionality of the act, and there was no decision on the merits. Tyler *v.* Judges, 179 U. S. 405.

It is a noteworthy fact that no other attempt has been made in Massachusetts to question the constitutionality of that act; and, as is well known, the popularity of the act has grown from year to year and its administration has been most successfully conducted. There have been a number of appeals—twenty-five or more from the decisions of the land court on questions of practice —but in none of them has any constitutional question been raised. And the act is so firmly established now in the jurisprudence of Massachusetts that no one imagines it can ever be successfully assailed on constitutional grounds.

5. STATE *v.* WESTFALL, 85 MINN. 437, 57 L. R. A. 297. FEB. 14, 1902.

This case involved the constitutionality of the Minnesota Land Registration Act of 1901, which was attacked: (1) Because it was special legislation. (2) Because it did not afford due process of law. (3) Because it mixed the powers of government by conferring judicial powers on ministerial officers. (4) Because the examiners of title were appointed instead of being elected. No one of these objections was sustained. In discussing the question of due process of law, the court said:

> "It is also contended by the relator that under the provisions of the act a person may be in actual possession of land the title to which is to be registered and service made upon him by publication, which may result in his being registered out of his title thereto without ever having any actual knowledge of the judicial proceeding instituted to secure a decree clearing and quieting a title as a basis for the initial registration. If this be the correct construction of the provisions of the act relating to the service of the summons, they do not constitute due process of law. (Baker *v.* Kelly, 11 Minn. 480, Gil. 358.) But the act is not reasonably susceptible of such a construction."

And on this subject it was further said:

> "Actions and proceedings to conclusively establish rights and titles against all claimants and parties, known and unknown,

are not novelties in our jurisprudence, for decrees probating wills, distributing estates of deceased persons, quieting title to real estate against unknown heirs and unknown parties, have been repeatedly held to be conclusive on the whole world. . . . The proceeding provided for by the act in question is . . . . substantially one *in rem,* the subject-matter of which is the state of the title of land within the jurisdiction of the court, and the provisions of the act for serving the summons and giving notice of the pendency of the proceeding are full and complete, and satisfy both the state and federal constitutions. To hold otherwise would be to hold that the courts of this state cannot in any manner acquire jurisdiction to clear and quiet the title to real estate by a decree binding all interests and all persons or parties, known or unknown. . . . That the courts of this state have jurisdiction to so clear and quiet title by their decrees is no longer an open question in this state."

And in concluding the discussion on this branch of the case, it was said:

"If the act is complied with, it is extremely improbable that an adverse claimant in actual possession of the land would fail of receiving notice of the pendency of the proceeding to register the title. However this may be, it is reasonably clear, and we so hold, that the particular provision of the act, which, in effect, forbids the commencement or the defense, in opposition to the decree, of any action or proceeding to recover the land brought more than 60 days after the entry of the decree, does not apply to an adverse claimant in the actual possession of the land, upon whom the summons is not served; for, being in possession, he cannot bring such an action, and his right to defend his possession and title in such a case cannot be made to depend upon his non-action. So construed, the provision of the act, both as to the opening of the decree and as to the commencement of any action or proceeding to recover the land in opposition to the decree, is valid as a statute of limitations. The time limit seems to us to be a short one, but, in view of the complete and far-reaching provisions of the act for notice to all parties, and the fact that the right of appeal as in civil actions is given, we cannot hold that the legislature arbitrarily exercised its discretion in fixing the limit."

With regard to the powers and duties of the registrars it was held:

"The registration is the act of the court. The fact that it may

be done by the registrar, under general orders, where there is no question, is not different from the power of the clerk to enter judgment, in cases ripe for judgment, under the general order or rule of the court."

6. NATIONAL BOND CO. *v.* HOPKINS, 96 MINN. 119. OCT. 27, 1905.

In discussing § 13 of the Minnesota Act, the court said:

"Its constitutionality is not to be determined independently, but rests upon the validity of the law as a whole. It is a mere branch of the tree, and depends for support upon the soundness of the trunk and the roots of the tree itself. The law itself being constitutional, this subordinate part is constitutional."

7. ROBINSON *v.* KERRIGAN, 151 CAL. 41. APRIL, 1907.

This case arose on application for a writ of mandate to the Superior Court of the City and County of San Francisco and to Frank H. Kerrigan, the judge thereof, to compel the hearing of petition for registration under the California Act of March 17, 1897, known as the Torrens Law. Judge Kerrigan had refused to enter a petition for registering land under the act on the ground that the act was unconstitutional. Hence the validity of the whole act was involved, and the following objections were considered and discussed: (1) In replying to the suggestion that the act did not afford due process of law, the court said:

"The proceeding is in all important particulars of similar character to that provided by the Act of 1906, known as the 'McEnerney Act.' Title & Document Restoration Co. *v.* Kerrigan, 150 Cal. 289, construing the 'McEnerney Act, is a 'full answer to the objection that the Torrens Law does not provide for due process of law, nor afford to all persons the equal protection of the law.' . . . The state has full control over the subject of the mode of transferring and establishing titles to property within its limits. For these purposes the state has power to provide a special proceeding, in the nature of a proceeding *in rem,* to fix the status of the land and declare the nature of the titles and interests therein and the person or persons in whom such titles and interests are at any time vested. It may do this whenever it may be considered necessary or likely to promote the general welfare. (Arndt *v.* Griggs, 134 U. S. 321; People *v.* Simon, 176 Ill. 165; Hamilton *v.* Brown, 161 U. S. 256.)"

(2) And in replying to the novel suggestion that the proceedings under the act were not judicial, this objection being based on the theory that there is or may be no adverse party, and hence that the proceeding is not adversary in character, the court said:

> "It needs no citation of authority to establish the proposition that the power of the court to entertain an action does not depend upon the appearance of the defendant and his active opposition to the claim of the plaintiff. . . . The contention is further made in this connection, that judicial power can be exercised only to settle existing disputes and controversies, and that, if none exist, the act of merely describing and declaring an undisputed title is necessarily administrative and cannot be performed by the judicial department. . . . Whether or not this is strictly an exercise of judicial power, as originally constituted, it cannot be denied that it is a power of the class which, from time immemorial, has been committed to and exercised by the courts."

(3) In replying to the suggestion that the act conferred judicial powers on the registrar it said:

> "There is no force to the objection. Every administrative officer is frequently called upon, in the discharge of his duties, to decide questions of law relating thereto. Recorders determine between deeds, leases, mortgages, etc., before recording. The sheriff determines, for his own guidance, ownership of property before levying. The duties required of the registrar by these sections are of the same nature. His decision in the matter is not conclusive. If he decides wrongfully and refuses to perform the appropriate duty in the premises, he may be compelled to act properly by means of a writ of mandamus, the same as any other ministerial officer who mistakes his duty under the law and refuses to perform it."

(4) In replying to the objection that the act was special, because it makes special provisions regarding the statute of limitations, the court curtly said:

> "We perceive no merit in this contention."

(5) In replying to the suggestion that the act was unconstitutional because its title was insufficient, it was said:

> "The same criticism might be made of many acts on a general subject which have always been considered as valid. . . .

> If it were necessary to mention every subdivision of the general subject of an act in the title to the extent here claimed, our statutes would present a somewhat ludicrous appearance. The statement of the subject in the title would generally occupy almost as much space as the act itself. Furthermore, if subjects, as intended by the Constitution, must be so minutely subdivided, it would be impracticable to enact any comprehensive law on any general subject, by reason of the necessity of dividing it into so many separate acts. The provision must receive, and it has received, a more liberal construction."

8. PEOPLE *v.* CRISSMAN, 41 COLO. 450. SEPT., 1907.

In this case the Colorado Registration Act was assailed: (1) Because its title was not sufficient. (2) Because it did not afford due process of law. (3) Upon the ground that it devolved executive duties upon the court, a suggestion which reverses the usual objection that such acts confer judicial powers on the registrars. (4) That the act created new officers, contrary to the Constitution. All these objections were overruled by the court, and the act was held to be constitutional. One of the arguments used against the provisions of this act was, that the plaintiff's case was partially tried and disposed of by the court before persons adversely interested were brought into court and made parties. This objection was based upon the powers and duties conferred on the examiners of title, but it was answered by a reference to § 23 of the act which expressly provides that "The court shall not be bound by the report of the examiners of title, but may require other or further proof." In answer to the objection that the act was unconstitutional because no judgment or decree could be rendered or entered in favor of a defendant, regardless of the showing he might make, the court said:

> "The act does accord to all persons equal rights and privileges. Any one desiring to avail himself of its terms can do so by filing his application, and can obtain the registration of his title by complying with the requirements of the statute. Although the legislature has seen fit to allow affirmative relief only to the applicant who initiates the proceeding, this does not render the proceeding objectionable for the reason assigned. The right to a particular remedy is not a vested right. Every state has complete control over the remedies which it offers to suitors in its courts."

And in reply to the suggestion that the act created new officers without authority, the court said:

"It was clearly within the province of the legislature to impose upon the clerk in his capacity of recorder of deeds the duties enjoined upon him by this statute. Making him registrar of titles does not constitute him a new county officer."

9. McMAHON *v.* ROWLEY, 238 ILL. 31. FEB., 1909.

This was a case in which the Illinois Registration Act was attacked as unconstitutional on account of the provisions of §§ 10 and 18, but the effort failed and the court said in reference to the objection to § 10:

"The general features of the Registration Act were held constitutional by this court in People *v.* Simon, 176 Ill. 165. Plaintiffs in error are in no condition to raise the constitutionality of this section."

10. BROOKE *v.* GLOS, 243 ILL. 392. FEB., 1910.

In this case § 18 of the Illinois Act as amended in 1907 was sustained against objections to its constitutionality.

This section, which has been frequently attacked, provides that the examiner may receive in evidence any abstract of title, or certified copy thereof, issued in the ordinary course of business by makers of abstracts; but that the same shall not be held as more than *prima facie* evidence of title, and any part or parts thereof may be controverted by other competent proofs. The section then defines what shall be sufficient proof that any original abstract of title was made or issued in the ordinary course of business by makers of abstracts. It will thus seem that the section relates to local conditions in Cook County due to the great Chicago fire.

11. WAUGH *v.* GLOS, 246 ILL. 604. 1910.

In this suit the Illinois Act was attacked as unconstitutional because contrary to the Illinois Constitution, Art. II, § 29, requiring all laws relating to courts to be general and of uniform operation. But the objection was overruled, and the court said:

"The Torrens system of registration of land titles is different from the prevalent method of recording; the manner of

bringing lands under such system must be provided by statute; the proceeding is of a different nature from the ordinary action at law or suit in chancery; and we cannot say that the legislature acted unreasonably in providing for a rule of evidence applicable to the proceeding without extending it to all other forms of action in which the title to real estate is involved."

12. HAMMOND *v.* GLOS, 250 ILL. 32. APRIL, 1911.

Strange to say, it appears to have been admitted by appellants in this suit that the Illinois Act, or certainly the 18th section thereof, is constitutional, as we learn from this expression in the opinion of the court:

"The appellants concede that this court has held the Torrens Law, as amended, constitutional, and make no contention on that branch of the case. (Waugh *v.* Glos, 246 Ill. 604; Culver *v.* Waters, 248 Ill. 163.)"

13. PETERS *v.* DULUTH, 119 MINN. 96. JULY, 1912.

In this case the Minnesota Registration Act was attacked as unconstitutional: (1) Because it does not provide for jury trial. (2) Because it does not provide for a trial on the merits. (3) Because it authorizes a dismissal of the application for registration contrary to Art. I, § 8 of the Minnesota Constitution. None of these objections was sustained. The case contains a condensed history of Torrens Laws and a fine general discussion of registration acts. Any one who is interested will be richly repaid by a full reading of the opinion. It declares that Torrens Laws have the general purpose to clear up and settle land titles, and takes the view that they are nothing more than an enlargement of the remedy to quiet title. Hence there is no constitutional right to a jury trial in Minnesota under Art. I, § 4, which says: "The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount of controversy." In disposing of this point the court said:

"There was no such right upon the ancient bill to remove cloud and quiet title, and it has been held in this state that the constitutional guaranty does not apply thereto. (Yanish *v.* Pioneer Co., 64 Minn. 175.)"

In this appeal it was held that a party not in possession may bring suit for registration of title against a party who is in possession, the court saying in this connection:

> "The purpose of the statute is to provide a speedy and summary remedy to clear up title to land. (Reed *v.* Siddall, 94 Minn. 216.) The remedy provided is not a substitute for an action of ejectment. . . . Moreover, the relief in ejectment is not coextensive with that which may be had upon an application to register . . . . it needs no argument to show that a title could never, in ejectment, be settled as against the whole world, as can be done upon an application to register."

14. TOWER *v.* GLOS, 256 ILL. 121. DEC. 5, 1912.

In this case the constitutionality of § 18 of the Illinois Act was again upheld. And it was further decided that the act was not unconstitutional as a local law, because only yet adopted by Cook County.

15. AMERICAN LAND CO. *v.* ZEISS, 219 U. S. 44. DEC. 19, 1910.

In this case the constitutionality of what is known as the "McEnerney Act" in California was upheld. The provisions of this act with regard to service of process or notice, and the conclusiveness of the proceeding against all the world, are more extreme than any to be found in the land registration acts. The action is commenced by the filing of a verified complaint, and the defendants are required to be described as "All persons claiming any interest in, or lien upon, the real property herein described, or any part thereof." The purpose of the act is to permit any person who claims an estate of inheritance or for life in, any real property, in which he is in the actual and peaceable possession, in person or by tenant or other person holding under him, to bring and maintain an action *in rem* against all the world, to establish his title to such property and determine all adverse claims thereto. An affidavit is to be filed with the complaint describing the estate claimed by the plaintiff, stating whether or not he has ever made any conveyance of the property, mentioning any liens thereon, and giving the name and address of any person known or reputed to have any adverse claim. If the

affidavit discloses the name of any person having adverse claim, summons is to be personally served upon him if he can be found within the state, together with a copy of the complaint and affidavit with a memorandum of its publication. This summons is to be published in a newspaper of general circulation published in the county in which the land is situate once a week for a period of two months and is to contain a memorandum of the names and addresses of persons said to have any adverse claim. A copy of the summons and memoranda therewith is also to be posted in a conspicuous place on each parcel of the property described in the complaint within 15 days after the first publication of the summons. Any person may appear and make himself a party to the action within three months after the first publication of the summons, or within such further time not exceeding 30 days, as the court may, for good cause, grant. At the time of filing the complaint a *lis pendens* notice is also to be recorded in the office of the recorder of the county in which the land is situated. Under this act Zeiss, being a tenant for the unexpired term of a lease for 99 years, due to expire on Mar. 26, 1950, on Dec. 19, 1906, obtained a decree establishing in himself the fee simple title to two lots of land in San Francisco. Subsequently the American Land Co. filed its bill in equity claiming to be the owner of the fee and asking for the removal of cloud from its title due to the aforesaid decree in favor of Zeiss, and praying that its title to the property might be quieted. The affidavit filed by Zeiss conformed to the requirements of the McEnerney Act, but contained no averment that an inquiry of any kind had been made to ascertain whether any adverse claim really existed. In its suit in chancery, the American Land Co. alleged that neither it nor its grantors received any notice of the pendency of the action by Zeiss under the McEnerney Act, nor did they know of the existence of the decree in his favor until more than a year after its entry, although they were at all times citizens and residents of California, not seeking to evade, but ready to accept service of summons and easily reached for that purpose; but no service was made upon them. In the lower court, the bill in equity was dismissed on demurrer, and this decree was affirmed on appeal.

Mr. Chief Justice White delivered the undivided opinion of the court, in the course of which he discussed: (1) The power of the state to control land titles under statutory proceedings. (2) The sufficiency of the safeguards provided in the statute in question. (3) The adequacy of the proceedings had in the particular cause. In the course of his opinion, he said:

> "As it is indisputable that the general welfare of society is involved in the security of the titles to real estate and in the public registry of such titles, it is obvious that the power to legislate as to such subjects inheres in the very nature of government. . . . That a state has the power, generally speaking, to provide for and protect individual rights to the soil within its confines, and declare what shall form a cloud on the title to such soil, was recognized in Clark *v.* Smith, 13 Pet. 195. So, also, it is conclusively established that when the public interests demand, the law may require even a party in actual possession of land, and claiming a perfect title, to appear before a properly constituted tribunal, and establish that title by a judicial proceeding."

After quoting from Arndt *v.* Griggs, 134 U. S. 316, as to the right of a state to conclude non-residents by publication of notice, the chief justice continued: "Manifestly, under circumstances like those here presented, the principle applies with equal force in the case of unknown claimants. Undisclosed and unknown claimants are, to say the least, as dangerous to the stability of titles as other classes." The unknown claimants here referred to were unknown resident claimants; and the court then cited with approval Hamilton *v.* Brown, 161 U. S. 256, and Bertrand *v.* Taylor, 87 Ill. 235, and Title & Document Restoration Co. *v.* Kerrigan, 150 Cal. 258. From the case last mentioned this quotation was made:

> "Applying the principles which have led the courts in cases like Arndt *v.* Griggs and Perkins *v.* Wakeham, 86 Cal. 580, 21 Am. St. Rep. 67, 25 Pac. 51, to sustain judgments quieting titles against non-residents upon substituted service, why should not the legislature have power to give similar effect to such judgments against unknown claimants where the notice is reasonably full and complete? The validity of such judgments against known residents is based upon the grounds that the state has power to provide for the de-

termination of titles to real estate within its borders, and that, as against non-resident defendants or others, who cannot be served in the state, a substituted service is permissible, as being the only service possible. These grounds apply with equal force to unknown claimants. The power of the state as to titles should not be limited to settling them as against persons named. In order to exercise this power to its fullest extent, it is necessary that it should be made to operate on all interests, known and unknown."

And so the conclusion unhesitatingly reached was, that the legislature of California was clearly within its rights in passing the McEnerney Act.

The court likewise had no difficulty in determining that the safeguards provided by the statute were sufficient, and on this point, the chief justice said:

"To argue that the provisions of the statute are repugnant to the due process clause because a case may be conceived where rights in and to property would be adversely affected without notice being actually conveyed by the proceedings, is in effect to deny the power of the state to deal with the subject. The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals."

This clear expression effectually dispels the mists and fogs and vague suggestions of ghostly dread with which the opponents of land registration have endeavored to overwhelm the proponents of the system, and should hereafter confine to undisturbed graves the spooks with which it has been so persistently attempted to terrorize a sensitive public. In point of fact, in the practical operation of land registration, none of the terrible predictions of its opponents has been verified. If called upon to file as an exhibit with their complaint a single "true owner" who has been robbed of his land by any of the land registration acts in the United States, these complainants would be compelled to confess the difficulty or impossibility of the task. Said the chief justice:

"These views dispose of all the contentions concerning the repugnancy of the statute to the 14th Amendment which we think it necessary to separately consider. In saying this

> we are not unmindful of a multitude of subordinate propositions pressed in the voluminous brief of counsel, and which were all in effect urged upon the Supreme Court of California in the Kerrigan and Hoffman cases, and were in those cases adversely disposed of, and which we also find to be without merit."

And without going further into this subject we are content simply to register our concurrence with the Supreme Court of the United States.

It is evident from this review of the cases that every conceivable line of attack which could commend itself to the critics and enemies of land registration, has been followed and pressed to a conclusion both in the state and federal courts. In reviewing the decisions one is struck by the ingenuity no less than the persistency of counsel in raising every objection likely to command the action of the courts. Nor have these attacks been confined to the courts, but no effort has been spared to convince every legislature which has taken up the subject, of the dangers of such legislation not only from a constitutional but from a practical point of view. Every act passed in the United States bears on its face the scars of desperate conflict. It is doubtful whether any legislation has ever been assailed with more bitterness or greater persistency than this; and unfortunately its antagonists have generally succeeded in marring the act even when they have been unable to defeat it. This Conference can render very high service to the whole country by guiding and moulding new legislation which is sure to follow, even if it should not be able to induce the states which have already passed land registration acts to adopt a uniform act.

The effect of the decisions reviewed herein which bear directly upon the constitutionality of the various title registration acts, is greatly heightened when we consider the numerous other cases bearing on these acts in which no constitutional question was raised.

EUGENE C. MASSIE, *Chairman*,
ROME G. BROWN,
AUSTIN V. CANNON.